INTERNATIONAL LAW

AMERICAN SCHOOL of CORRESPONDENCE
CHICAGO ILLINOIS

INTERNATIONAL LAW

INSTRUCTION PAPER

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INTERNATIONAL LAW

CHAPTER I

PLACE IN LEGAL SYSTEM

§ 1. Introductory. International law consists of those rules of conduct which are recognized by civilized nations in their international affairs. In sovereignty the nations stand on a legal equality. There is no parliament of the world to legislate for the nations; neither is there any common court to decide, or marshal to enforce obedience to international law throughout the world. Obedience by a nation rests upon consent, or the exercise of military force by the nation feeling itself aggrieved. Through the Hague Tribunal steps are being taken by the nations to avoid the necessity of resort to arms, but the Tribunal rests at present on the temporary consent of nations to abide and perform the decisions of that body; and not on any joint army and navy of the world to compel the performance of any decree, as to what one nation shall do, or not do, towards another.

It is probable that in time the great national powers will by agreement ordain an international code, or system of laws by which all the nations will be governed in their foreign affairs. Two forces are at work in bringing this about. The modern agencies of commerce, and especially the steamship, telegraph, and cable are bringing the nations into daily intercourse and general acquaintance; while the burden of maintaining armies and navies is so heavy—especially on the European powers—that it would seem that relief must be had through an international convention limiting at least the number of soldiers, and ships, constituting the military forces of the first class military powers; viz,

Great Britain, Germany, France, and Russia. Germany, Austria, and Italy have an alliance (*drei bund*) extending from the Baltic to the Adriatic, for the purpose of maintaining an enforced peace in Europe. Russia and France have a similar alliance. While England and Japan have a like alliance during ten years for the peace of the seas, and particularly the Pacific ocean. These movements for the prevention of war by united arms, will naturally in time result in better peace by the common agreement to minimize standing armies and navies; maintaining these forces only to preserve domestic peace and order. And when the family of nations come to such a common amity, necessarily there will be an International Code, and an International Court. But at present the general system of international law prevails, except as modified by special treaties for limited periods, to submit certain specified matters to arbitration. Arbitrators are governed, and must proceed and decide according to the existing rules of international law; and the Hague, and London conventions, as hereinafter mentioned.

§ 2. **Origin.** The law between nations, like the law for persons and property is an evolution arising from the motives and purposes of men. In the earliest times, tribes and then nations, regarded all others as enemies. All strangers were barbarians, and subject to be despoiled of property, and captured and held as slaves. For this purpose Persian armies invaded Greece. And Rome sent her fierce legions to all the other nations of that time, until she became the military despot of the countries on every shore of the Mediterranean, and ruled by force the civilized world.

Hostility was the status of nations, and war was the aim and purpose of nation toward nation. "Carthage must be destroyed" was the cry of the Roman people until it was razed to the ground. There was no such thing as lasting friendship and amity between great or rival nations. It was war and conquest. And when in time the Roman Empire was broken up, and disintegrated into many

small states, each of these held the others in hostility, and petty warfare with castles and walled cities was the condition of Europe for one thousand years, called in history the Dark Ages. At length Christianity tempered the fierce passions of mankind. In time the nations began to exchange their products, one with the other. Commerce begets friendship and peace, and abhors war.

By reason of geographical advantages Holland in time came to be the leading commercial nation. And naturally the thought of that nation was bent towards peace on land and sea.

Hugo van Groot, Latinized Grotius, was born at Delft on April 10, 1583. He mastered the learning of that age. When fifteen he accompanied an embassy to France, and later was a member of a commission to England concerning certain maritime customs. In early manhood he held other high offices in Holland, so that his attention was given to the rules and practices of nations on land and sea. The discovery of America had awakened commercial enterprise, and enlarged the horizon of nationality. The time was ripe for a Christian and benevolent view of the true relations of nations to each other. In 1625 Grotius published a treatise on the laws of war and peace (*De Jure Belli et Pacis*). His argument was that the true relation of man to man was friendship and concord; that all men are children of one God to whom He has given the land and sea for the common good; that nations are merely aggregations of peaceful men, and so nations should hold the same relations to each other. His book was printed in Latin—the language of scholarship at that time throughout Europe—and was warmly received everywhere. His was an epoch-making book. It marks the beginning of modern international law. Other writers enlarged and revised the system Grotius had founded; notably Puffendorf, Bynkershoek, Wolffe, and others, culminating for the eighteenth century in Vattel's work on the "Law of Nations", published in French in 1758. He was a diplomatist, and simplified and applied practically the general rules of the science of inter-

national law to the whole range of intercourse between nations and their subjects. The American statesmen of the revolutionary era were conversant with Vattel's work, and the spirit of his teachings breathes in the opening of our Declaration of Independence:

"When in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume, among the powers of the earth, the separate and equal station, to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes which impel them to the separation."

After the United States had taken a leading place in the family of nations, and republican form of government had come to be regarded as a stable system on this hemisphere, Wheaton in 1836 published his "Elements of International Law". He was master of the whole subject, both as lawyer, and by long service in our diplomacy with the German states.

Since then many books have been written by many learned men as Bluntschli (German), Martens (Russian), Phillimore, Hall, and many others. But the student will best pursue Vattel and Wheaton; the proceedings of the Conferences at the Hague, and the Naval Convention at London; as these are in a measure international Codes in matter of war on land and sea. The laws relating to their civil relations, when not regulated by treaties, must be found in the great body of international law.

§ 3. **Sources.** International law is in force in every civilized country. It forms a part of the law of the United States, and of every State of the Union. It finds expression in (1) usages or general customs, (2) treaties, (3) statutes, and (4) decisions of courts. The regulations of the Hague Tribunal and other international conventions are in effect international treaties. When the United States became a nation by the Declaration of Independence and

sought to enter into the family of nations, necessarily the international laws governing the other nations at once took effect in this country. And recognizing this principle, it was set forth in the Declaration:

"We therefore . . . solemnly publish and declare . . . that as free and independent States they have full power to levy war, conclude peace, control alliances, establish commerce, and to do all other acts and things which independent States may of right do."

In Hilton v. Guyot,[1] the Supreme Court said:

"International law, in its widest and most comprehensive sense including not only questions of right between nations, governed by what has been appropriately called the law of nations; but also questions arising under what is usually called private international law, or the conflict of laws, and concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominion of another nation, is part of our law, and must be ascertained and administered by the courts of justice, as often as such questions are presented in litigation between man and man, duly submitted to their determination.

"The most certain guide, no doubt, for the decision of such questions is a treaty or a statute of this country. But when, as is the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is, whenever it becomes necessary to do so, in order to determine the rights of parties to suits regularly brought before them. In doing this, the courts must obtain such aid as they can from judicial decision, from the works of jurists and commentators, and from the acts and usages of civilized nations."[2]

Custom has been defined to be the usage of all civilized nations.[3] Custom, of course, is long practiced and is general consent not evidenced by a treaty. A treaty is a

[1] 159 U. S. 163.

[2] Fremont v. U. S., 17 How. 542, 557; The Scotia, 14 Wall. 170, 188; Respublica v. De Longchamps, 1 Dall. 111, 116; Moultrie v. Hunt, 23 N. Y. 394, 396.

[3] United States v. Arredondo, 6 Pet. 691.

contract between nations executed according to the laws of the nations making the treaty. In monarchial governments the king holds the treaty-making power. In the United States the President with the advice and consent of the Senate is empowered to make treaties. A State cannot "enter into any treaty, alliance, or confederation".[4] And the President has no power to make a treaty with another nation except two-thirds of the senators concur.[5] When made the treaty becomes the supreme law of the land, binding alike on the national government and each of the States of the Union.[6]

As a treaty is made to be a law of the United States, it is held that a treaty and an Act of Congress are of equal rank. It follows that a treaty may supersede a prior Act of Congress.[7] And an Act of Congress may supersede an earlier treaty.[8]

This is an anomaly in international law for, generally speaking, in foreign countries parliaments and other legislative bodies have no part in making treaties. And this has led to difficulties in our diplomatic department not always easy to explain. Thus, a treaty with China was changed by the Act of Congress excluding Chinese emigrants contrary to the existing treaty with that nation.[9] But the world now generally understands the provisions of our National Constitution, and acts with full regard to its provisions.

Statutes often declare the law of the enacting nation on certain subjects of international law. A statute has no extra-territorial force. But it binds the treaty making power and the courts of that nation.

In the absence of a treaty or statute upon any subject in hand, within the domain of international law, resort is had to recognized works upon international law, the decisions

[4] U. S. Cons., Art. 1, § 10.
[5] U. S. Cons., Art. 2, § 2.
[6] U. S. Cons., Art. 6.
[7] Cherokee Tobacco Case, 11 Wall. 621.
[8] United States v. Lee Yen Tai, 185 U. S. 220.
[9] See statutes and decisions and treaty compiled in 1 Fed. Ann. Stat. p. 754, and 7 Fed. Ann. Stat. p. 480.

of courts; diplomatic instructions and correspondence; the proceedings of international congresses, conferences and conventions; and lastly the proceedings at The Hague.

The Supreme Court of the United States in The Paquete Habana,[10] states the rule as follows:

"International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right, depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive, or legislative act, or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."

In its very nature, international law at present is in a state of progressive evolution. The Hague, and Red Cross, and other influences are softening the cruelties of war. Commerce, travel, and international literature are leading year by year to closer relations between the peoples of the world, and bringing about a growing spirit of peace and amity between the nations. So that it seems probable that during this century the nations will adopt a general and uniform system of international law.

[10] 175 U. S. 700.

CHAPTER II

NATIONAL JURISDICTION

§ 4. Land. To constitute a nation there must be a people organized into a government of law, occupying a certain portion of the lands of the earth. There cannot be a nation without land occupied by civilized men.

Vattel defines nations as bodies politic; societies of men united together for the purpose of promoting their mutual safety and advantage by the joint effort of their combined strength. A nation, as said by the Supreme Court of the United States in Montoya v. United States,[1] presupposes or implies an independence of any other sovereign power more or less absolute, an organized government, recognized officials, a system of laws, definite boundaries, and the power to enter into negotiations with other nations. So the nomadic tribes of the east, the North American Indians, the natives of Africa, are tribes only, because they are lacking in the essential qualities of statehood.

When the treaty of peace was made between the United States and Great Britain at Paris on September 3, 1783, the boundaries of this nation were stated by fixing lines bounding the lands over which this nation then had jurisdiction. So when France ceded Louisiana to the United States in 1803, the land granted was described as the "same extent that it now has", etc. So in the treaty of 1898, Spain "cedes to the United States, the archipelago known as the Philippine Islands, and comprehending the islands lying within the following lines"; giving certain named lines of latitude and longitude. No area of land is too small to be the basis of a nation. Thus Monaco is not as large as an American township, yet it is a nation, entitled to and receives diplomatic recognition.

[1] 180 U. S. 265 (1900).

§ 5. Maritime. National jurisdiction extends over the land, and three miles, or a marine league, from the shore over the sea; and over all gulfs, bays, and estuaries not more than six miles wide. This extent of jurisdiction is deemed necessary for legal process, fishing, enforcement of neutrality, police regulations, enforcement of revenue laws, and prevention of smuggling, etc. This limit of protection was adopted at a time when that was the reach of a cannon ball. Where the shores of a bay or the like, are more than six miles apart, measured from headland to headland, some nations have at times claimed jurisdiction of the whole interior waters and questions have arisen, which rule should measure the extent of the jurisdiction. It seems safe to say the three mile (marine league) rule generally obtains in the absence of mutual consent.

The rule had its rise in Bykershoek's "De Dominio Maris" (1702), wherein he held that territorial jurisdiction over the waters of the sea ended, with the reach of force from the shore. With the increased reach of arms, efforts have been made to increase the distance, but as yet unsuccessfully.

No nation owns the sea. The sea is the common property of all mankind. Every ship while at sea is subject to the laws of the nation in which she is registered. In international law a ship at sea is held to be a part of the body of the nation whose flag flies at the mast head. And the laws of such nation apply to torts, crimes, and all other matters happening on shipboard.

§ 6. Aerial. The introduction of air ships, wireless telegraphy, and military balloons are raising the problem how far national jurisdiction extends above the earth. It would seem by the law of nature that each nation has exclusive jurisdiction in the air above the land of its realm. Assuming this to be true, then it remains for each nation to say for itself when, and under what circumstances, aërial instrumentalities may cross its physical boundaries.

§ 7. Persons. Every civilized person in the view of international law is a member of some nation. There is no

man without a country. In international law, citizen and subject are used interchangeably; but commonly we speak of citizens of a republic and subjects of a kingdom. The term "nationals" is applied generally to all persons owing allegiance to a nation. Every person owes allegiance to his nation, and the nation is bound reciprocally to afford protection to every citizen. This is the basis of nationality.

The question: What confers or fixes the nationality of persons is sometimes one of difficulty and uncertainty, owing to the fact that the rules are not uniform throughout the world.

The first rule is that children born within a nation of which the parents are citizens, are citizens of that nation. Ordinarily by marriage the wife takes on the nationality of the husband; so that with rare exceptions a child born in a nation whereof its father is a subject is a citizen of that nation. Foundlings whose parentage is unknown are subjects of the nation in which they are found. So illegitimate children take on the nationality of the mother when a subject of the nation where the birth occurs. In the United States, the rule of nationality is fixed by the Fourteenth Amendment which declares:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside."

This does not embrace Indians.[2] But it does embrace children born in the United States of alien parents of any civilized nation. Thus a child was born in San Francisco in 1873 of Chinese parents subjects of the Emperor of China. It was held by the Supreme Court that the child was an American citizen, although its parents could not be naturalized.[3]

It is provided in the Ninth Article of the treaty of 1898 with Spain, wherein the Philippines and Porto Rico were ceded to the United States, that:

[2] Elk v. Wilkins, 112 U. S. 94.

[3] U. S. v. Wong Kim Ark, 169 U. S. 649 (1897).

"The civil rights and political status of the native inhabitants of the territories ceded to the United States shall be determined by Congress."

As yet Congress has not incorporated the Philippine Islands into the body of the United States although exercising governmental jurisdiction thereover; and so the inhabitants of territory living at the time of the treaty have not been made citizens of the United States.[4] The political status of children born on the islands since the treaty is a question never as yet answered authoritatively.

In prior treaties it had been usual to provide that the civilized inhabitants of the ceded territory should be made citizens of the United States. Thus, by Article 3 of the treaty with France for the purchase of Louisiana it was provided:

"The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. . . ."

The treaty with Mexico in 1848, provided in substance that Mexican subjects within the ceded territory might return to Mexico within one year.

"And those who shall remain in the said territory after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States."

The United States issues passports to the native inhabitants of the Islands and regulates their governments, and admits their representatives to Congress on a level with representatives from other territories. And it would seem that, internationally at least, the native inhabitants hold the status of allegiance to, and protection by our government, against aggression by any foreign government.

[4] Dorr v. United States, 195 U. S. 138 (1903).

If we retain the islands permanently it would seem that in time their inhabitants must acquire the status of citizens of the United States by virtue of the provision found in the Fourteenth Amendment declaring that all persons born within the United States and subject to the jurisdiction thereof are citizens of the United States.

§ 8. Children Born Abroad. The status of children of American parents born abroad is often one of uncertainty and difficulty. This arises out of the fact that, generally speaking, in Europe and other foreign countries a child at birth takes the nationality of the father without regard to the place of birth. This rule is known as *jus sanguinius* (law of the blood). This is the rule in Germany, Austria, Hungary, Switzerland, Sweden and some other European states. This was formerly the general rule of civilization and arose out of what seems to be a law of nature. A child belongs to its family and tribe. Besides in earlier times a subject could not change his nationality—at least without the consent of his king. Under the old feudal system which prevailed throughout Europe for centuries, the tenant of the lord held the use of the land as a vassal, and was bound among other things to give military service. The feudatory rights were hereditary, the son taking the place of the father; and so the vassals were attached to, and in a fictitious sense were a part of, the land. Thus all persons born on the land of the lord owed him allegiance. So that the place of birth fixed the allegiance of the tenant under the rule of *jus soli* (place of birth). This was the law of England at the settlement of America. Mr. Justice Gray, in United States v. Wong Kim Ark,[5] made an historical review of the law of Europe and states the common law of England to be:

"The fundamental principle of the common law with regard to English nationality was birth within the allegiance, also called *ligealty, obedience, faith,* or *power* of the king. The principle embraced all persons born within the king's allegiance and subject to his protection. Such allegi-

[5] See *supra,* footnote 3.

ance and protection were mutual as expressed in the maxim *protectio trahit subjectionem, et subjectio protectionem* (protection involves subjection and subjection involves protection) and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom. Children, born in England, of such aliens, were, therefore, natural-born subjects."

Because of this conflict some nations have modified the rules so as to provide that children born of alien parents are subjects of the nation where born, but at majority have the right of election which national character they will take. The state department of our government has in some instances directed children born abroad of American parents, and residing at the place of birth, to exercise this election at majority. So that in Europe it is coming to be recognized generally that children born of foreign parents and residing in the land of their birth must at majority elect their allegiance. The rule does not prevail in the United States, except as regulated by the Act of Congress of March 2, 1907, and Sec. 1993 Rev. Stat. 11.

Out of the contrary rules of *jus sanguinius* and *jus soli* at times arise cases of curious complications. Thus, a child of alien parents in whose country the *jus sanguinius* prevails, born in the United States, would be under the Fourteenth Amendment a citizen of the United States, and at the same time a subject of the same realm as the father. This matter sometimes arises when a young man of alien parentage is residing in the country of his father's birth and desires to avoid military duty. Without further discussion it can only be said that the nations probably in time will adopt some uniform rule governing the citizenship of persons, born within the jurisdiction of one country, of parents who are citizens of another country.

This "dual allegiance" is now usually accommodated diplomatically by requiring the individual at majority to elect which nationality he will conserve. The Act of March 2, 1907, is for this purpose.

Exceptions. There are some exceptions to the rule that the place of birth fixes the status of citizenship.

Ambassadors and ministers, and their families and suite, and other diplomatic officers, while residing abroad are exempt from the jurisdiction of the laws of the nation to which they are accredited, and so their children born there are not citizens of such country. So a hostile army occupying a part of another country is not subject to the law of such country, and children born in camp are not within the rule. So no nation has jurisdiction over the high seas. And a foreign man of war in a friendly port is usually held not to be within the civil jurisdiction of such country. Diplomatic representatives, armies, and ships at sea are said to carry their nationality with them.

The same is true of a king while traveling in another country.

In some countries, including the United States, a private vessel is held in law to be a part of the land of the country whose flag it flies, and where the place of birth fixes the nationality, it seems to follow that a child born on such a vessel on the high seas, is a citizen of the country to which the ship belongs. Also children born abroad of parents who are citizens of the United States temporarily residing outside its jurisdiction, are held to be citizens of the United States.

It was to preserve these rules of the law of nations that the exception was made in the Fourteenth Amendment that persons born in the United States of parents not subject to the jurisdiction of the government are not citizens of the United States.

CHAPTER III

NATURALIZATION

§ 9. Who are Eligible to Citizenship. Generally speaking, a citizen of one country may now by choice become a citizen of another in the mode provided by the adopting nation. When land is acquired by purchase or conquest, it is usual to make provision for the inhabitants thereon, if civilized, to become citizens of the nation acquiring jurisdiction. Yet it is not obligatory. As has been said, the United States did not citizenize the Filipinos. The Act of April 30, 1900, made the citizens of Hawaii on April 12, 1898, citizens of the United States.

The old rule was, "Born a subject, always a subject". The government of the United States has always maintained that expatriation is a natural right, that God has given the earth to his children, and every man has a right to live wherever he may choose although his native country object or refuse.

This country was settled by immigrants from the Old World who came here of their own choice to enjoy political and religious liberty, and it was natural for them and their posterity to hold to this doctrine, when founding a new nation in the New World. And so it is provided in the Constitution of the United States that Congress is given power to "establish an uniform rule of naturalization". So naturalization in the United States rests entirely with Congress, and Congress has from time to time legislated on the subject. Not every alien can become by naturalization a citizen of our Republic. The Acts of Congress declare that only "aliens being free white persons, and aliens of African nativity, and persons of African descent" can be naturalized. And the Act of May 6, 1882, specifically excludes the Chinese.[1]

[1] Rev. Stat. U. S. § 2169.

It has been held by the courts that the following races are not entitled by naturalization to become citizens of the United States: Indians born in British Columbia, Mongolians, including the Chinese and Japanese; but native Mexicans may be admitted as free white persons.[2]

In short, only white men and black men now are eligible in the United States to citizenship by naturalization; while men of any race or color born within the jurisdiction of the United States are citizens thereof. By the naturalization Act of June 29, 1906, anarchists and polygamists are excluded; as also are all who cannot speak the English language or have not "a good moral character". The naturalization of the husband and father *ipso facto* includes his wife and minor children if in this country.[3] By marriage a woman takes on the nationality of her husband. On divorce she is sometimes restored to her original nationality.

By reason of the dual character of the United States a person has a dual citizenship, one in the nation and another in the State wherein he resides. But the latter is not recognized internationally. As said the doctrine of expatriation at the will of the subject or citizen was formerly contrary to the law of most countries. Both on the Continent and in England, the general rule was that no citizen or subject had the power of throwing off his native allegiance without the consent of his sovereign. Expatriation is leaving one's country and at the same time renouncing his allegiance to it with the purpose of making a home in and becoming a citizen of another country. Our doctrine of the inherent right of a man to expatriate himself from the country of his birth, without the consent of his king, to become a citizen of the United States has led to many difficulties in the past with other nations. It was the real cause of the war with England in 1812. It has led to many diplomatic struggles with other nations, arising out of their laws requiring every young man to do military service. Their young men

[2] See cases collected, 5 Fed. Stat. Ann. § 2169, and also, 81 Fed. Rep. 337.
[3] See Act of March 2, 1907, and Rev. Stat. U. S., § 2172.

before arriving at the military age come to America, reside here five years, are naturalized, and then taking passports as citizens of the United States return home often to be arrested for failure to do military duty. Of course an American citizen is not subject to such duty. On the one hand, it is claimed that the subject went to America to avoid military service, that the expatriation was without consent and is fraudulent, and the naturalization should not be recognized. On the other hand, that every man has the natural and inherent right to leave his native country, and make his home in and become a citizen of the United States, and his naturalization papers and passport conclusively establish the citizenship of the person as American. This contention is being solved by treaties. By the treaty of 1870 between the United States and Great Britain, it was provided that British subjects, who are naturalized according to law within the United States of America as citizens thereof, shall be held by Great Britain to be in all respects and for all purposes citizens of the United States and shall be treated as such by Great Britain. The same provision is made with the Austro-Hungarian monarchy in the treaty of 1870. Similar treaties were made with some of the German states before the unification of the German Empire and continue in force; with Belgium in 1868; with Denmark in 1872; Sweden and Norway in 1869. The treaty with the North German Union of 1868, contained the same provision with the modification that if a German, naturalized in America, renews his residence in North Germany without intent to return to America, he shall be held to have renounced his naturalization of the United States. There are other treaties which relate to this subject. By the Act of Congress of March 2, 1907, provision was first made for Americans expatriating themselves. Most of the States in South America hold the doctrine of the national right of expatriation.

It may be said that now generally speaking all the nations acquiesce in a *bona fide* naturalization in the United States. And where the United States is convinced that it

was done *male fide* and not with the intention to become and remain in good faith a citizen of the United States, the government will not use diplomatic or forceful means in defense of the applicant. Indeed, when convinced beyond doubt that the real intent of the alien was to become naturalized and then return and reside in his native country and thereby escape the burdens of citizenship, the United States will cancel the passport, or refuse to renew. The statute on this subject is intended to put an end to abuses of this nature.[4]

§ 10. **Status of Applicant.** The political status of an applicant for American naturalization is unique. The statute provides for what is known as first papers. In the application, which is made two years, at least, prior to admission to citizenship, the alien declares, among other things:

"It is my *bona fide* intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty and particularly to———— of which I am now a citizen (subject) . . . and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein."[5]

Such has long been the law. Now during the interim between this renouncement of allegiance to his sovereign and his final admission into citizenship there is a period in which the applicant is not legally and fully a citizen of any country. He cannot expect his sovereign to extend to him protection. May he demand protection from the United States? The case of Martin Koszta is an important precedent. An Hungarian by birth, he was engaged in the Kossuth rebellion and fled to America in 1850 and declared his intention in due form of law to become a citizen of the United States.

After remaining here nearly two years, he visited Turkey and while at Smyrna was forcibly seized and taken on an

[4] See Act of March 2, 1907, 34 Stat. at L. 1228.

[5] See Act June 29, 1906, 34 Stat. at L. 596, § 27.

Austrian brig of war then lying at that port, put in irons as a traitor, and was about to be taken as a prisoner to Hungary. The American diplomatic representative in Turkey interfered ineffectively to obtain his release. Commodore Ingraham, in command of an United States ship of war, arrived in port, and after investigation came to the conclusion that Koszta was entitled to American protection, and ran alongside the Austrian vessel, and by threat of superior force compelled his surrender. A diplomatic correspondence followed between Austria and the United States. The Emperor of Austria claimed that Koszta was not a citizen of the United States, and so was his subject, and made grave complaint to our government of the conduct of the officers of the American ship who took part in the transaction, and demanded of our government a disavowal thereof, and satisfaction for what was termed an outrage. Our state department answered that Koszta was seized by Austria in Turkey without legal authority, that he was being wrongfully detained on the Austrian brig of war, and "that at the time of his seizure he was clothed with the nationality of the United States," and that the acts of our officers were justifiable in the premises. So the demands of the Emperor were declined.[6]

This has always been considered an extreme case. It is singular from most cases in that Koszta was taken in a third state. Had he returned home to Hungary, it would have presented another view. Modern writers on international law disapprove of the doctrine of this case.

Suffice it to say, it is now understood to be the law: *first,* that a declaration to become a citizen (first papers) does not confer citizenship; *second,* that such declaration may give the declarant the right of protection by the United States against a third sovereign, but not (in the absence of treaty stipulations) as against his sovereign if he returns to his native land; and *third,* while he remains domiciled in this country, the government will protect him in all the rights which the law of nations attaches to domicil. That

[6] 2 Wheaton Int. Law Dig. § 175.

is, the nation of his domicil will protect him while he resides there in his rights of person and property. But the applicant is not invested with the political rights of citizenship until he is adopted finally.

By the Act of Congress of March 2, 1907, 34 Stat. § 1228, applicants are allowed passports for six months, but such passport shall not entitle the holder to the protection of this government in the country of which he was a citizen prior to making such declaration of intention.

CHAPTER IV

DIPLOMATIC AND CONSULAR SERVICE

DIPLOMACY

§ 11. **Historical.** Internationally, all persons and all property of every kind within the boundaries of a nation are considered as belonging to the nation.[1] The people of every State have the right to organize for themselves such form of government and make such laws for the government of themselves as they may choose. The State being organized has a right to exist as a sovereign political unity, free and independent of any external control, with the right of intercourse with other nations. This intercourse must be carried on by representatives of the nations appointed for that purpose and vested with power and authority to act for and bind the nation. This is the service of diplomacy. It was an old formula that only kings could speak with kings about the business of their respective nations. And when they could not meet in person they sent one of their most illustrious and competent subjects to speak for them. When the business on which he was sent was accomplished he returned to his own country.

As the relations of the nations ceased to be hostile and came to be friendly, and commerce grew and extended throughout the world—through the constant intercourse of the subjects of the several civilized nations—the need arose of constant and daily intercommunications between the sovereigns of the world. And this led in time to the appointment of permanent representatives to reside near the courts of the other sovereigns, clothed with power to speak for and bind the sending sovereign, in all matters relating to the business of his subjects and the welfare of his country. The practice historically speaking is modern. Grotius did

[1] Vattel, ch. 20.

not think permanent embassies necessary. And Coke in his Institutes of English Law commends his king (Henry VII.) for not suffering "lieger ambassadors of any foreign king or prince within his realm—but upon occasion used (special) ambassadors". And it was not until after the Peace of Westphalia (1648), that the leading nations of Europe came to recognize and establish permanent embassies. Writing in 1758, Vattel said that rulers and sovereigns cannot well come to a personal conference in order to treat of their affairs; besides, he adds:

"It is rarely that any good effect could be expected from them. The only expedient, therefore, which remains for nations and sovereigns is to communicate and treat with each other by agency or procurators or mandatories—of delegates charged with their commands and vested with their powers—that is to say *public ministers*. The term in its more extensive and general sense denotes any person intrusted with the management of public affairs—but is more particularly understood to designate one who acts in such capacity at a foreign court."

During the time of the Napoleonic wars, owing to the overthrow of existing, and the erection of new nations ruled by new kings, who established new courts, great confusion came about over rank, precedence, and ceremonies; so that the Congress of Vienna in 1815, in which were representatives from all the great powers of Europe, established rules governing diplomats which are still in force, and are observed throughout the diplomatic world.

§ 12. **Character and Rank.** Art. I. Diplomatic agents are divided into three classes: (a) that of ambassadors, legates, or nuncios; (b) that of envoys, ministers, or other persons accredited to sovereigns; (c) that of *charges d'affaires* accredited to ministers for foreign affairs.

Art. II. Ambassadors, legates, and nuncios only have the representative character.

Art. III. Diplomatic agents on an extraordinary mission have not, on that account, any superiority of rank.

Art. IV. Diplomatic agents shall take precedence in their respective classes according to the date of the official notification of their arrival. The present regulation shall not cause any innovation with regard to the representative of the Pope.

Art. V. A uniform mode shall be determined in each State for the reception of diplomatic agents of each class.

Art. VI. Relations of consanguinity or of family alliance between courts, confer no precedence on their diplomatic agents. The same rule also applies to political alliances.

Art. VII. In acts or treaties between several powers which grant alternate precedence, the order which is to be observed in the signatures shall be decided by lot between the signatories.

Art. VIII. It is agreed that ministers resident accredited to them shall form, with respect to their precedence, an intermediate class between ministers of the second class and *charges d'affaires*.

These rules are embraced in the Instructions given to the diplomatic officers of the United States and generally of all other countries.

It will be noticed that by the second article that only ambassadors and representatives of the Pope have the representative character; that is, they represent the very person of their sovereign, and have the right to ask and be received personally by the sovereign to whom they are accredited. In Catholic courts the representatives of the Pope have precedence over all other ambassadors; and the latter have precedence over all ministers. At all official functions, first the ambassadors, and next the ministers take their places in line in the order of the dates of the presentation of their credentials. For more than a century the United States appointed ministers only; because a minister represents his nation, and not the person of the president or sovereign. This was felt in time to lessen the diplomatic character of our representatives; as every ambassador, without regard to the political rank of the

nations, always has precedence of ministers abroad. To relieve our representatives of this diplomatic embarrassment, in 1903, Congress provided:

"Whenever the President shall be advised that any foreign government is represented—or is about to be represented in the United States by an ambassador . . . he is authorized in his discretion to direct that the representative to such government shall bear the same designation."[2]

It is well to note that by section 1674 Revised Statutes, Congress declared:

"Diplomatic officer shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, *charges d'affairs,* agents, and secretaries of legation and none other."

This is important as bearing on the immunities and privileges accorded diplomatic representatives by international law.

§ 13. Privileges and Immunities. A diplomat in order to reach his post and discharge his duties must necessarily be exempt from all interference from foreign laws. Under the Roman law he was held *sancti habentur legati;* and this rule is universal. This immunity is like that accorded to kings. These immunities of a diplomatic representative are extended to his family, his secretaries, attachés, and all persons forming his suite; and generally to his servants and domestics, taken with him because of their necessity to his dignity and comfort. Generally speaking it may be said that the diplomatic representative, his family and official aids, couriers and the like, and servants, are exempt from both civil and criminal jurisdiction of the country of his sojourn, and cannot be sued, arrested, or punished by the law of that country. This rule of international law is well expressed in the statute of the United States[3] as follows:

"Whenever any writ or process is sued out or prosecuted

[2] 27 Stat. at L. 426.

[3] 2 Rev. Stat. § 4063.

by any person in any court of the United States, or of a State, or by any judge or justice, whereby the person of any public minister of any foreign prince or state, authorized and received as such by the President, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, such writ or process shall be deemed void."

It is customary for the head of the embassy or legation to file with the foreign department at his post, a list of all persons in his service, so that no embarrassments may arise. All property connected with his service is exempt from taxes. An officer of the law may not enter his house against his will. Children born to him within the State to which he is accredited are not subjects thereof, but of the nation which he represents. In short his house and household are not a part of that country but of the nation to which he belongs.

Of course it is not to be thought that any diplomatic representative will purposely avail himself of the right to evade just obligations. Should he do so, it becomes a matter of diplomatic action between the two nations. Neither should he make his embassy a house of refuge. He cannot be compelled to testify in the courts of justice. Yet his sovereign may waive the privilege if his testimony will not affect his own country. In such cases, it is usual for him to give his deposition in his own house. On the trial of Guiteau for President Garfield's assassination, the Venezuelan minister, under instructions, appeared personally as a witness.

By general usage goods of a diplomat taken with him, or afterwards imported, are exempt from custom duties; but this is not an inherent right. This immunity is generally extended by a third state through whose territory the same may pass. Exceptions sometimes arise, and the immunities are waived under special circumstances.[4]

§ 14. Credentials and Ceremonials. Only sovereign or independent states may send ambassadors and ministers.

[4] See Hall's International Law, ch. 4.

Every independent State has the right to send its representatives to other nations. Canada exercises many of the powers of self-government, yet not being a sovereign country it has no diplomatic representatives. So in our treaty of 1903 with Cuba it is stipulated that:

"The government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba."

So that Cuba has a limited right of diplomacy. There are other instances not material to enumerate. Monaco is regarded as an independent state.[5]

The sending of a diplomatic agent with full powers is an act of sovereignty. And in international law, in their rights and privileges, independent States are on equality. One nation is not bound to receive the representative of another; but the act of reception is a recognition of nationality. During the civil war, the nations refused to receive the diplomatic representatives of the Confederate States. Every State has the right to select its representatives under its own domestic laws. But it is not unusual to obtain an assurance from the receiving State that the person proposed to be sent is *persona grata* (an acceptable person). A diplomat abroad becomes in a measure the intimate associate of the circle or court of the sovereign to which he is accredited, and it is essential to international friendship that the representative and his family, should in no wise be offensive to any persons he may meet in social and official functions. One instance may suffice to show the policy of not violating this rule. In 1885 the Italian government refused to receive our representative (Mr. Keily) because some years before he had publicly denounced the acts of that government in overthrowing the temporal power of the Pope. Subsequently President Cleveland appointed Mr. Keily our minister to Austro-Hungary. The Emperor of

[5] Hall, p. 31, note.

Austria also refused to receive Mr. Keily, not disclosing that it was for the same reason, but stating that his wife was a Jewess, and his marriage only a civil one, in contemplation of the law of that country. These incidents caused the diplomatic relations to be strained for a time, and the legation at Vienna was left by President Cleveland in charge of the secretary. The duties of a diplomat are social, as well as of a business character, and often accomplishments in the one are hardly less important than qualifications in the other.

On receiving his commission the diplomatic representative is given a ceremonial letter of credence. On arrival he informs the minister of foreign affairs and requests that he may be permitted to present his letter to the king or president in person. A time being fixed, he is given an audience when he presents his letter; and is formally received officially. At some courts the representative makes a short address pertinent to the occasion, at others in a less formal way he conveys the good wishes of his chief for the health and prosperity of the president or king, and an assurance of continued friendship between the two nations. Then he is usually requested to call upon the members of the court and the diplomatic corps, accompanied by his secretary.

Formerly, official communications were usually written in Latin, and afterwards in French, but during the Franco-Prussian war Bismarck would not communicate with his enemy in their tongue, and so wrote in German. And now our government and most others use their own language in official communications, which are sometimes accompanied with a translation in French, when the minister of foreign affairs, or other official addressed, is not familiar with the English language.

The subject of official dress is one of difficulty with some American diplomats abroad. Most nations prescribe certain diplomatic uniforms to be worn at ceremonial functions. In the earlier times our diplomats were required to wear the dress of an American gentleman. This rule was

sometimes not observed. At the close of the Civil War (1866), Congress enacted that:

"All officers who have served during the rebellion as volunteers in the Army of the United States . . . shall be entitled upon occasions of ceremony to wear the uniform of their highest rank in the volunteer service."[6]

This was held to embrace the diplomatic service. The next year (1867), Congress declared that no person in the diplomatic service of the United States shall wear any uniform or official costume not expressly authorized by Congress.[7]

Yet the rule is not enforced strictly; and under the claim that some courts require on occasions of ceremony that all diplomats shall be in some uniform, sometimes American diplomats wear uniforms of their own choice. In one instance a representative adopted the uniform of the style worn by General Washington as chief of the army. But generally Americans wear the dress our President wears at similar diplomatic ceremonies and functions at Washington.

§ 15. Diplomatic Duties. A diplomat represents his country in important matters between his own nation and that to which he is accredited. He has nothing to do ordinarily with trade and business between the citizens of the two nations. That as we shall soon see is for the consular service. His duties in a broad sense are to promote and protect the political rights of his nation and of its citizens within his jurisdiction. Usually all official communications between the two nations is through diplomatic channels. A citizen of one country desiring to present a claim against another, cannot write to or communicate with the foreign government directly or personally, but only through the diplomatic department of his own nation. When necessary a diplomat may negotiate treaties subject to approval. It is his duty to strive to protect the citizens of his country when within his jurisdiction, in their treaty rights, and in their

[6] Rev. Stat. § 1226.

[7] 1 Rev. Stat. § 1688.

personal liberty. If a fellow-countryman makes claim that he is being illegally oppressed in person or property, a diplomat may on being satisfied of the truth, make intervention in the foreign office and ask for such relief as seems just in the premises. Thus, if a native of the foreign country being a naturalized citizen of the United States, on return is held for military duty, the American representative presents proof of the naturalization, and calling attention to the provisions of the treaty (if any), demands and secures compliance with the provisions thereof. It is not necessary to enumerate all the matters coming under his care; but the protection of American missionaries in their rights of person and property must not be overlooked. He must keep his government advised of political events taking place, and of the policy of the country in which he resides, when likely to affect his own country. In a broad sense his duties are at all times to cultivate and preserve friendship between his country and the country of his sojourn, and to adjust amicably any differences between them.

Extradition. Another important duty is in connection with extradition. By the common law there was no legal duty resting on one nation to arrest and return a citizen or subject of another nation charged with crime. A moral obligation is recognized between the nations of Continental Europe to do this, arising out of their close political and geographical relations, and also their forms of government. In Continental Europe it seems that it is a principle of their international law that by comity criminals must be surrendered by one nation to another. Not so in England and the United States. In these countries, extradition is authorized and regulated by statute and treaty. We have such treaties with nearly all the nations. The treaties usually specify the crimes extraditable. Formerly, only felonies and other grave crimes were named; but in later treaties the lists are enlarged, to cover embezzlement and other lesser offenses. The procedure is simple. The nation desiring the return of one of its subjects charged with a crime, and a fugitive from justice, submits proof to the diplo-

matic representative, who, on being satisfied that there is just cause, sends the papers to his home government, which arrests the fugitive, affords a hearing as to the identity of the prisoner, and this being established returns him to an agent of the demanding government. The present statute of the United States provides that before an arrest, some one, often the foreign consul, shall file with some United States or State judge, a complaint under oath, charging the commission of a treaty crime, whereupon a warrant issues, and a hearing is had both as to the personal identity and evidence of criminality. The judge, if he deems the evidence sufficient to warrant the prisoner's return, so finds, and certifies his finding with a copy of all the evidence to the Secretary of State, who ultimately determines whether the prisoner shall be surrendered. In monarchial countries, the king usually exercises this power of arrest and return through his minister of foreign affairs. The president has no such power. Our statute declares:[8]

"That no return or surrender shall be made of any person charged with the commission of any offense of a *political* nature."

The same is the law of England. A political offense means when a body of men by force undertake to better their political condition by war or revolution. To such who fail (often called revolutionists), England and America offer asylum. The case of *In re* Castoni is the leading authority defining what is a political offense.[9]

CONSULAR SERVICE

§ 16. Province. A consul is an important officer in international law, but is not officially a member of the diplomatic corps, and in Europe does not receive diplomatic recognition at the imperial courts. Elsewhere this courtesy is sometimes extended to consuls. Consuls are aids to

[8] Rev. Stat. § 5276.

[9] *In re* Castoni, 1 L. R. Queen's Bench (1891); see also, *In re* Ezeta, 62 Fed. Rep. 972.

commerce. They are usually stationed at seaports or other places where exports and imports pass in and out of a country. They have districts of trade allotted to them. In most nations there is a consul-general who has supervisory jurisdiction over the other consuls of his country resident in that nation. They are commissioned by the president or chief of a nation. The commission is usually sent to the diplomatic representative to which the consular district belongs, who presents the same to the minister of foreign affairs, who endorses an approval thereon, or otherwise gives consent for the consul to reside at his post. This consent is called an *exequatur,* a word meaning let him execute or perform his office. This the diplomatic representative transmits to the consul, and is the evidence of his right and authority to represent his country in all matters within the range of his duties and within his district.

§ 17. Duties. The duties of the consul are many; the most important and usual may be summarized as follows:

(1) They collect and transmit to their home government information upon the trade of the district and other commercial, economical, agricultural, and mechanical matters and the like.

(2) They have a supervisory power over the vessels of their own country and their officers and crews, and settle disputes which have taken place on shipboard and between seamen and their officers; and may compel sailors on shore to return to their ships.

(3) They may arbitrate disputes brought before them by their fellow countrymen, more especially matters of commerce connected with their own country.

(4) When government makes provision therefor, they send home shipwrecked, unemployed, and destitute sailors or countrymen.

(5) They authenticate births and deaths, and administer the property of their countrymen dying in the district, or country under their consular jurisdiction, and notify the home government of such facts.

(6) They authenticate the execution of deeds and other legal instruments by their official seal, for use in their own country; and take depositions and certify affidavits, and other documents for use in the courts in their own land.

(7) They protect their fellow countrymen against legal abuses as far as possible; and when injustice is done, report to their home government.

(8) They witness, and certify, and when authorized by the laws of their own country solemnize marriages.

(9) In some of the non-Christian countries like China they are vested by treaties with, and exercise judicial powers between their own countrymen and the natives, and over their own countrymen for criminal offenses.[10]

(10) They certify invoices of goods sent as imports into their own country, and are given duties in connection with emigration from their consular jurisdiction to their home land. Under our statutes they may issue emergency passports. In short, they are the national business agents for their own people. But they do not represent the government in its political affairs. The Act of Congress of April 5, 1906, 34 Stat. L. 99, and the executive orders broadened and elevated the service.

A well-trained consular corps is of great aid to the extension and maintenance of international commerce. The Statutes of the United States now provide that the consuls shall be men of special fitness, and as far as may be, speak the language of the nation in which they hold their posts.

[10] *In re* Ross, 119 U. S. 453.

CHAPTER V

TREATIES

§ 18. Necessity For. Nations often find it necessary to make treaties between themselves; sometimes because of disagreement of writers on the law of the matter in question; sometimes because there is no rule applicable to the precise matter in hand; sometimes to modify and make certain and sure the obligations and duties of each to the other; and more often to regulate trade and commerce between themselves. Formerly, treaties were written in Latin; afterwards, generally in French; but now it may be said the practice is when the nations use different languages, to execute the treaties in both languages in parallel columns on the same sheet. Treaties are usually made through the agency of the diplomatic representatives or by commissioners duly empowered for the purpose. Often the chief heads of a treaty are first agreed upon, and put in the form of a "memorandum" or "*protocol*" or "*proces verbal*", as such preliminary drafts do not require the ratification of sovereigns, or heads of the States—though in a measure they are in good faith binding. These chief matters of negotiation being thus settled, the treaty is worked out in formal detail. Thus, a *protocol* was made between the United States and Spain at the termination of the Spanish war.[1] Thereupon each nation appointed commissioners who met in Paris and concluded the treaty on December 10, 1898.[2]

No treaty is binding until it is approved by the head of the nation, and in the United States ratified by the Senate. It was held by Vattel and other publicists that, when a minister with full powers signed the treaty, it bound his sovereign, even though he had made a mistake, or in-

[1] 30 Stat. at L. 1742. [2] 30 Stat. at L. 1754.

cluded matters not intended to be embraced. But it is now generally held otherwise, and with reason; else a treaty might be the very means of bringing about unfriendly relations. Of course no such question can possibly arise with us, as treaties are not consummated until approved by the President and ratified by the Senate.

It sometimes happens in time of war that the officer in command of the military forces concludes agreements for certain military purposes; but when such arrangements exceed the limits of military necessity, they are void. Thus, when General Sherman made terms in the field with the commander of the Confederate forces opposing him early in 1864, and undertook to embrace the subject of the political rights of the Confederates on the conclusion of the war, President Lincoln at once declared that was beyond the powers of an officer in the field. Freedom of consent is necessary to the validity of all contracts whether between persons or nations. But war is held to be for the purpose of compelling the enemy to make a just peace. It follows that "in international law, force and intimidation are permitted means of obtaining redress for wrongs, and it is impossible to look upon permitted means as violating the agreement made in consequence of their use by which redress is provided for."[3]

§ 19. Interpretation Of. At common law one nation cannot be sued by another, so that it often happens that in working a treaty, disagreements arise of serious import. In the interpretation and construction of treaties certain rules have been laid down by writers on international law for guidance of those having to do with ascertaining the meaning of international agreements. They may be briefly summarized as follows:

(1) The treaty is to be read in the light of contemporaneous documents such as the memoranda, *protocols,* and any correspondence between the parties leading up to the consummation of the treaty.

(2) When words used are clear and precise, they must

[3] Hall, Int. Law, § 108.

be interpreted in their ordinary, usual, and natural meaning. To this there are some obvious exceptions. Thus, if in diplomatic usage words have a meaning variant from the exact lexical definition, it will be understood they were used in the diplomatic sense. So the words will be held to have the usual meaning they bear in the nation to which they apply.

(3) When the treaty is written in two languages, it sometimes happens that two parallel words or phrases do not carry precisely the same shade of thought. In such cases if one has in effect dictated the treaty, the interpretation shall favor the other party, on the ground that doubts and uncertainties are resolved against the draughtsman. So if the same words have variant meaning in different nations, the meaning will carry which obtains in the state accepting the conditions and the like.

(4) When a common intent led to making the treaty, such intent will govern any uncertainty, or ambiguity, that may arise in its application to modified conditions afterwards arising.

(5) A treaty like a constitution or statute will always be held to mean, what the parties making it intended and understood it to mean at the time it was made.

(6) The rules of equitable, rather than of strict legal construction, should prevail; and this because nations do not seek to obtain improper advantages over each other, but rather to encourage and promote friendship, and amity, between their sovereigns and their peoples.

(7) That which is clearly granted by the treaty, carries with it by necessary implication all that is fairly necessary for its realization.[4]

§ 20. Termination Of. Treaties are obligations of the most sacred character. And this is so because they are covenants of the highest order, and because there is no mode of obtaining compensation for injury following a breach except taking it by force of arms. It is, therefore,

[4] Hall, Int. Law, § 111; Vattel, Book 2, ch. 17.

not unusual for the parties to stipulate in the treaty that it shall be in force for a fixed time, or that it may be "denounced", that is, terminated by either party on a given notice. This is specially true of treaties of alliance, commercial treaties, and others of like character. Thus the alliance between England and Japan is for ten years; and that between Germany, Austria, and Italy made at the close of the Franco-Prussian war expired a few years since and was renewed.

When the object of a treaty is accomplished, it becomes null. The same is true when further execution becomes impossible. So when by general international law the object of the treaty becomes immoral, as in the slave trade. Again some authorities advance the dictum that a nation may repudiate a treaty which is opposed to the rights, development, and welfare of the nation. If by this is meant to say a nation may violate a sacred treaty when to its own advantage, then the doctrine is immoral and fallacious.[5]

It seems to be settled that war terminates all commercial treaties, and those relating to current affairs. Of course executed treaties remain unimpaired. As war inhibits all civil intercourse between the peoples of the hostile nations, it seems to follow that all treaty regulations concerning such intercourse are likewise ended, and do not revive at the close of the war. The United States on some occasions have held to the contrary doctrine. But after the Treaty of Paris with Spain at the close of the Spanish war, we yielded to her contention that the war terminated the commercial treaty, and in 1902 made a new treaty of friendship and general relations.[6]

[5] Hall, Int. Law, § 116.

[6] 33 Stat. at L. 2105.

CHAPTER VI

AVOIDANCE OF WAR

§ 21. By Arbitration. It is the duty of nations so far as possible to settle their disputes between themselves either through their diplomatic representatives, or commissioners appointed for that special purpose. When this fails the matter is often referred to the mediation of some sovereign mutually chosen for that purpose. Questions of boundaries and the like are often settled in this manner. But the more usual mode is by reference to arbitration of competent men versed in international law. The treaty between the United States and Great Britain in 1871 for the determination of the Alabama claims, known as the Geneva Tribunal treaty, is an example. The treaty of 1892 between the same nations relating to fur seals in the Behring sea is another. Here the tribunal was composed of seven arbitrators—jurists of distinguished reputation in their respective countries—chosen as follows: two named by the President, two by Her Britannic Majesty, one by the President of the French Republic, one by the King of Italy, and one by the King of Norway and Sweden. The dispute was heard in the manner of a law case, and an award entered regulating the rights of the citizens of each nation in the form of a decree in chancery.[1]

Hague Tribunal. Now a permanent court of international arbitration is established at the Hague, with a mode of procedure judicial in character. The disputants may submit any matter of dispute to the permanent court at the Hague. A list of arbitrators of known competency in questions of international law and of the highest moral reputation is provided, chosen by the several nations. Each party appoints from this list two arbitrators, of whom one only

[1] See 7 Fed. Stat. Ann. p. 605.

can be a citizen of such nation. And the four arbitrators together choose an umpire, who is president *ex officio*. The parties sign a statement of the subject of dispute. Evidence is presented by the counsellors of the respective parties, argument is had, and the judgment takes the form of an award, accompanied by a statement of the reasons like unto an opinion of a civil court.

This mode is not exclusive as the parties may arbitrate outside of the Hague Tribunal under the general practice of international law. But this mode is now more generally accepted, and the nations are making agreements between themselves to submit all matters of dispute to the Tribunal, excepting generally differences involving national honor, or matters of the highest vital interest. The student should consult "The Peace Conference at the Hague", by F. W. Holls (1900), and the texts of the first (1899) and second (1907) conferences at the Hague by F. Snow. These matters are also set forth sufficiently by Wilson and Tucker in the fifth edition of their "International Law" (1909).

The trend of international statesmanship is towards this mode of avoiding war.

§ 22. By Mediation. Another mode of avoiding war practiced in modern times and approved by the Hague Conference is friendly mediation of a third State, extending its good offices to prevent war, or even to secure peace after hostilities have begun. A friendly mediator does not assume to pass upon any disputed question, but seeks to find a means of bringing the parties to a settlement between themselves. A tender cannot be matter of offense, as either nation may decline the offer, and it is of no avail unless both accept the offer of the mediator. Vattel says:

"Mediation in which a common friend interposes his good offices frequently proves efficacious in engaging the contending parties to meet each other half way—to come to a good understanding, to enter into an agreement or compromise respecting their rights, and if the question relates to an injury, to offer and accept a reasonable satisfaction."

Mediation may be offered to prevent war, or to conclude an existing war. Vattel adds:

"It frequently happens that two nations, though equally tired of war, do nevertheless continue it merely from a fear of making the first advances to an accommodation, as these may be imputed to weakness; or they persist in it from animosity, and contrary to their real interests. On such occasions some common friends of the parties effectually interpose, by offering themselves as mediators.

"There cannot be a more beneficent office, and more becoming a great prince, than that of reconciling two nations at war, and thus putting a stop to the effusion of human blood; it is the indispensable duty of those who have the means of performing it with success."

The mediation of President Roosevelt, in 1905, between Russia and Japan and bringing about the end of the war by the Peace of Portsmouth is a great illustration of the beneficence of this mode of good offices.

Peaceful adjustment by the parties is provided for under the Hague Convention and was used between Great Britain and Russia. In October, 1904, Russia dispatched her fleet from St. Petersburgh to the East to engage the fleet of Japan. It had been reported that Japan had torpedo boats in European waters to at once engage the Russian ships and cut off the voyage to the Pacific. In the early morning of October 22, 1904, when the Russian fleet was passing out of the North Sea some of the officers saw through the darkness the glint of lights and at once assuming they were Japanese vessels of war, and without investigating, fired into the lights which were in fact British fishing vessels. The English people cried for war against Russia, and Russia sought to excuse the hasty conduct of the naval officers.

The two powers by mutual consent submitted the whole matter to the International Commission of Inquiry at The Hague. Russia was held blamable, and the damages for the British subjects killed and injured, as well as that done to the fishing vessels, was assessed, and Russia at once paid the same.

§ 23. **Redress without War.** International law permits redress of grievances without war; that is the taking by force the property of an offending state or its subjects, in compensation in value for the wrong done, either to the State or its citizens. Under this head comes "retorsion", which as the word implies consists in treating the subjects of the State giving provocation, in an identical or closely analogous manner with that in which the subjects of the State using retorsion are treated. This is practiced under tariffs and the like. Thus, if the productions of State A are discouraged, or not permitted to be taken into State B, by partial and differential duties, or other exceptional burdens the State affected may retaliate by like laws and duties.[2] These are called tariff wars. To avoid such conflicts it has become customary to insert in commercial treaties what is known as the "favored nation clause", by which it is agreed the one nation shall enjoy the same rights as the most favored nation.

Another form of retaliation is by reprisals; that is, the aggrieved State seizes as for compensation the public property or the private property of the citizens of the offending State. This is so near war that it is not practiced except by a strong against a weaker state; and is not looked upon with favor.

This method may take the form of an embargo, which consists in the detention of merchant ships and goods within the ports of the aggrieved state, and if war follows the ships are confiscated as well as the merchandise. This harsh practice is rarely followed any longer. The president on the breaking out of the war with Spain made proclamation that Spanish vessels in United States ports were to be allowed thirty days to load and depart. And this principle is included in the terms of the Hague Convention of 1907.

In the same list of modes of redress the measure known as the "pacific blockade" must be included. This consists in one nation blockading the ports of another without war, until the State blockaded complies with the demands made

[2] Hall, Int. Law, § 120.

upon it. This began in 1827, when Great Britain, France, and Russia used it to induce the Sultan to accede to their demands in favor of Greece. The last instance was in 1902, when Great Britain, Germany, and Italy blockaded the ports of Venezuela and threatened to take possession of, and collect, and apply the customs to the payment of Venezuelan obligations held by the former countries. On complaint being made by the United States to this mode of collecting debts it was turned into a war blockade and the matter was finally adjusted, without coming to actual war.

This practice was modified by the Hague Conference of 1907 in the following provision:

"The Contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.

"This undertaking is, however, not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any 'Compromis' from being agreed on, or, after the arbitration, fails to submit to the award."

CHAPTER VII

WAR

§ 24. Rights by Force of Arms. When differences between nations come to the point that diplomatic relations cease, it is usually followed by force of arms, which is violence regulated by the usages of nations, and exercised until one is made to accept such terms as the other will grant.

This is war. It is defined as a "properly conducted contest of armed public forces". Vattel says: "War is that state in which a nation procures its rights by force of arms." Ordinarily the belligerents are independent nations; but it is not necessary that both parties should be acknowledged by other nations as an independent or sovereign state. Thus, in our Civil War the Confederate States were not acknowledged by any nation, yet they were accorded belligerent rights by the United States and the world at large[1]

Since the days of Grotius it has been the effort of publicists, statesmen, and rulers to alleviate and mitigate the "cruelties and misery produced by the scourge of war". To this end many rules have come to be recognized in international law, and observed and enforced on the field and elsewhere. Every military nation publishes instructions for the government of its armies in the field and the navy at sea. And such become the military law of that nation. In 1864, at Geneva, the nations in convention adopted internationally a code for the relief and care of the wounded, which is known as the Red Cross; and which was revised in 1906, and adopted in the Hague Conference in 1907. And in 1907, at the Hague Conference, the nations promulgated "Regulations respecting the Laws and Customs of War on Land". So that now these, rather than textbooks and

[1] The Prize Cases, 2 Black. U. S. 635.

the like, must be consulted by the student of the laws of war in the field. These rules are rather for the soldier than the civilian. The chief rules may be summarized as follows:

(1) A nation must not commence war on another without *first,* a previous and explicit warning; or *second,* an ultimatum with a conditional declaration of war, in which case no notice is required. In 1911 Italy began war against Turkey on an ultimatum. But Japan in 1894 began war against China without notice, and against Russia in 1904, in the same way. Of course the rule cannot well apply to a civil war, as insurgency does not become lawful war under international law until belligerent rights are recognized and accorded.

(2) Neutral powers must be notified by the belligerents without delay, which may be given by telegraph; and until the receipt of notice, or knowledge otherwise unmistakably had, neutrals are not affected.

(3) Belligerents are prohibited:
   - (a) To employ poison or poisoned arms;
   - (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
   - (c) To kill or wound an enemy who, having laid down arms, or having no longer means of defense, has surrendered at discretion;
   - (d) To declare that no quarter will be given;
   - (e) To employ arms, projectiles, or material of a nature to cause superfluous injury;
   - (f) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform; as well as the distinctive badges of the Geneva Convention;
   - (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;
   - (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of war.

It would carry us too far afield to further follow the various rules of war on land. The student will find the matter treated with historical interest in "War Rights on Land" by Spaight (1911).

§ 25. Persons Affected by War. It is axiomatic that "the subjects of enemy States are enemies". This includes non-combatants as well as combatants. *Inter arma silent leges.* We have seen that war severs diplomatic relations and breaks up treaties between the hostile States; likewise it stops all intercourse between the people of the countries at war.

The people of the one State are public enemies of the people of the hostile State. They can have no commercial or other civil intercourse. They cannot contract with, or buy of, or sell to the other. Partnerships are dissolved. Contracts and debts are not extinguished, but suspended. Limitation laws are dormant, and interest stops. The citizens of one belligerent State are incapable of contracting with the citizens of the other belligerent State. All intercourse between subjects and citizens of the belligerent countries is illegal, unless sanctioned by the authority of the governments, or in the exercise of the rights of humanity. The courts of each State are closed against the citizens of the other. A plea of alien enemy destroys the jurisdiction. "They have no *persona standi in judicio* (capacity of standing in court), no power to sue in the public courts of the enemy nation".[2]

The rule finds illustration in a case happening in the Civil War where during the occupation of New Orleans a citizen thereof, loyal to the United States, acting as the agent of a disloyal planter, agreed to sell his crop of sugar to a British subject then resident in that city. The sale was

[2] 3 Wheat. Int. Law Dig., § 337.

held void and could not be enforced on the return of peace.[3]

But this rule does not prevent the citizens of one belligerent power from taking legal proceedings for the protection of their own rights and property in their own courts against the citizens of the other, when the latter can be reached, or their property seized under legal process. One belligerent may seize and confiscate the private property of any citizen of the enemy state, if found within the jurisdiction of the former; and this because it weakens the resources of the enemy. This is lawful confiscation.

On the conclusion of peace, *ante bellum* obligations are enforcible, and interest again begins, and statutes of limitations start to run the remainder of the statutory period. In other words, civil rights stop and stand during the war period.

During war the government may license its citizens to trade with the enemy as was done during the Civil War for the purchase of cotton, thus legalizing such intercourse with the enemy.

A new question arose after the close of the Civil War growing out of policies of insurance written before the war by companies of Northern States, on lives of citizens of the Southern States. It was finally held *first,* that as by the terms of the policies, non-payment of an annual premium worked a forfeiture, the policies were not revived, as time was of the essence of such contracts, and *second,* if non-payment was caused by the hostilities prohibiting intercourse, so that the assured could not pay the premiums, and the company refused to reinstate the policy at the close of the war, on the full payment of all delinquent premiums, then the beneficiary was entitled to recover the equitable value of the policy, with interest from the close of the war.[4]

§ 26. Neutrals. It is the policy of international law to minimize the ravages of war as far as possible. Nations not allies of the belligerents must refrain from helping or

[3] Montgomery v. United States, 15 Wall. 395.

[4] New York Life Ins. Co. v. Statham, 93 U. S. 24 (1876).

arming either party or their subjects or citizens. The status of nations towards each other is that of war or peace. And so the *status* of neutrals is that of peace which they must observe inviolate. It is the modern practice for nations to make proclamation of their neutrality, as was done in the case of the war between the United States and Spain. Germany did not make formal proclamation, but the Emperor announced the same in a speech before the Reichstag. The Russian proclamation of April 18, 1898, was in these words:

"It is with keen regret that the Imperial Government witnesses an armed conflict between two States to which it is united by old friendship and deep sympathy. It is firmly resolved to observe with regard to these two belligerents a perfect and impartial neutrality."

The general rules now established by the Hague Convention of 1907, may be summarized as follows:

(1) The territory of neutral States is inviolable, and "belligerents are forbidden to send troops, or convoys of either munitions of war or supplies across the territory of a neutral power". An exception is permitted so that a neutral State may authorize the passage through its territory of wounded, or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants or war material. Neither must a neutral permit a belligerent to erect or use on its territory a wireless telegraph station or other apparatus for the purpose of communicating with belligerent forces on land or sea. But this rule does not apply to the use by the belligerents impartially of telegraphs, cables, and the like belonging to the neutral nation or its citizens.

(2) A neutral power which receives on its territory troops belonging to the belligerent armies must *intern* them as far as possible from the theater of war. Belgium did this to the French troops that crossed her borders in the Franco-Prussian war.

(3) "A neutral power is not called upon to prevent the export or transport on behalf of one or other of the belligerents, of arms or munitions of war, or, in general of anything which can be of use to an army or fleet."

(4) The citizens of a neutral state must not commit hostile acts against a belligerent, nor enlist in the ranks; but a citizen of a neutral state may furnish supplies, or make loans provided he does not live in the territory of the other belligerent, nor in the territory occupied by it, and the supplies do not come from these territories.

(5) Generally speaking, a neutral power must not knowingly permit a belligerent to fit out, arm, or equip within its jurisdiction war vessels intended to carry on war against a belligerent, or to capture and destroy its merchantmen. This rule was applied against Great Britain in the case of the Alabama; and is enforced by many States.[5]

(6) During time of hostilities a war vessel of a belligerent may search a merchantman of a neutral power, both on the high seas and the waters of the belligerent, to ascertain by examination of the ship's papers, etc., whether she is carrying to the enemy munitions of war or military supplies, in violation of the rules of neutrality. Such goods are called contraband of war. This belligerent right must be based on probable cause, and exercised only when war is raging; and if wanton, subjects the captor to damages. Neither the vessel nor the goods can be appropriated by the captor, but must be taken into a prize court, by which the case is heard and determined under the rules of international law. Mails are now generally immune from seizure.[6]

(7) During the Civil War an American frigate took from on board the English passenger steamer Trent, Mason and Slidell, Confederate diplomats, on their way to Europe. The Trent was permitted to proceed on her

[5] Hall, Int. Law, 637 *et seq.*

[6] Hall, Int. Law, chs. 9, 10.

voyage; but the prisoners were brought to Boston. A keen diplomatic controversy arose between the United States and Great Britain over the question whether the capture was authorized by international law. Mr. Seward held they were "contraband" and liable to capture; Lord Russell, that they were diplomatic agents from a belligerent state, and so, exempt by the law of nations. Suffice it to say the matter was accommodated at the suggestion of President Lincoln that "one war at a time is enough". Hall holds that persons are not "contraband goods or despatches and that the arrest was unjustifiable".[7]

(8) Be that as it may, it is elemental that where two nations are at war, they have the right to make prizes of the ships and goods of each other on the high seas; and of contraband of war carried under any flag; and destined for the forces of the enemy.

(9) What goods are now contraband and when they may be taken, is sought to be settled by the Naval Conference at London in 1908-09, to which the student is referred.[8]

§ 27. Blockade. A blockade is shutting off communication of and with a place occupied by one belligerent, by the armed forces of the other belligerent. It is usually spoken of in connection with water communication. On land it is a siege.

To constitute a maritime blockade, there must be a state of war, notice of the blockade by proclamation or otherwise, must be given to neutrals, and it must be maintained by sufficient force to make it effective. By the London Naval Conference, it is required that the date be fixed when it begins, so that neutral vessels may depart, and the port or geographical limits of the coast to be blockaded be described. Blockades in order to be binding must be maintained by a force sufficient to really prevent access to the coast of the enemy; that is to say, to make ingress and

[7] Int. Law, p. 705.

[8] See Wilson & Tucker (5th ed.) Appendix XII, p. 450.

egress actually dangerous. And this is a question of fact. A paper blockade is null. A blockade comes to an end by a cessation of a reasonable attempt to make it effective, or by the repulse by force of the vessels maintaining the blockade.

The only penalty for engaging in running the blockade is the liability to capture and condemnation, by the blockading belligerent. And the seizure must be made within the radius of action of the blockading squadron, or while still being pursued by a ship of the blockading force. The usual penalty for a violation of the blockade is a forfeiture of the vessel and cargo. The London Declaration[9] declares, however, if at the time the goods were shipped, the shipper neither knew, nor could have known of the intention to violate the blockade the same are exempt from the penalty.

The offending vessel and cargo when arrested are taken to a prize court, and the fact determined whether the same are lawful prize.

[9] Ch. 1, Art. 21.

CHAPTER VIII

MONROE DOCTRINE

§ 28. The Holy Alliance. The question has been much mooted whether the American principle known as the Monroe Doctrine comes within the domain of international law. The history of the promulgation is well known historically. Upon the final overthrow of Napoleon, the chief powers of Europe formed an international association to perpetuate monarchial government, called the Holy Alliance. In 1822, the Spanish Colonies in South America were in revolt, and undertaking to establish governments of their own in the form of republican States; and Spain called upon the Alliance for help to recover her colonies in revolt. President Monroe in his message of December 2, 1823, found it necessary to say among other things:

"The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other

light than as the manifestation of an unfriendly disposition toward the United States."

The United States has always held firmly to this doctrine, and on more than one occasion it has been recognized by the European powers. Thus, in the matter of the disputed boundary between Venezuela and British Guiana, President Cleveland appealed to the doctrine in justification of the right of the United States to see to it, that the South American Republic of Venezuela was not menaced by the compelling force of Great Britain, and that government yielded so far, as to agree to an arbitration. Again, in 1902, Germany and England made a joint naval demonstration against Venezuela to enforce their money claims, and threatened to take forceful possession of parts of the land, and collect and appropriate the customs to the discharge of the debts. At the same time the German and British governments disavowed any intention to acquire and permanently hold territory. This matter was soon settled amicably. In his message of December 3, 1901, President Roosevelt said:

"The Monroe Doctrine should be the cardinal feature of the foreign policy of all the nations of the two Americas, as it is of the United States. . . . The Monroe Doctrine is a declaration that there must be no territorial aggrandizement by any non-American power at the expense of any American power on American soil."

The Panama Canal emphasizes the importance of maintaining American supremacy on the American hemisphere. And while the Monroe Doctrine is sometimes called merely a policy which the United States could change or abandon at will, and so, not a matter of international law, yet it would seem to be the law between the nations of America, to be recognized and observed by the other powers of the world.

EXAMINATION PAPER

INTERNATIONAL LAW

Read Carefully: Place your name and full address at the head of the paper. Any cheap, light paper like the sample previously sent you may be used. Do not crowd your work, but arrange it neatly and legibly. *Do not copy the answers from the Instruction Paper; use your own words, so that we may be sure you understand the subject.*

1. What steps have the world powers already taken in the way of agreements to preserve international peace?

2. Name some of the early writers who laid the foundations of our international law, and the works they published.

3. What is a treaty and with whom does the treaty-making power lie?

4. Define *a nation*, giving the elements necessary to constitute one.

5. Who has jurisdiction over the sea and the air?

6. How is the citizenship of a person determined?

7. Explain the rules of *jus soli* and *jus sanguinius* and tell how a conflict between the two rules is usually reconciled today.

8. What persons are eligible to become naturalized citizens of the United States today?

9. Does the fact that an applicant has taken out his first papers for citizenship in the United States, entitle him to all the rights of citizenship in the United States?

10. How did the modern custom of having resident ambassadors at the capitals of the various nations arise?

11. Why is it the United States had no ambassadors in foreign countries until 1903?

12. Name the different privileges and immunities which diplomatic representatives are entitled to in this country.

13. Describe the manner of presentation of a diplomat newly appointed.

14. What uniforms are usually worn by diplomats from the United States?

15. State in a general way the duties of a diplomat.

16. By what law may a person charged with a crime in one nation and who has escaped to another be brought back to the nation from which he has escaped?

17. What function does a nation's consular service fulfill, and briefly what are the duties of a consul?

18. How are treaties made, ratified, and terminated? By what law are they construed or interpreted?

19. In what ways may international difficulties be settled without war?

20. What is The Hague Tribunal? Has it ever been successful in averting war?

21. How are wars between nations commenced, and by what rules are they conducted?

22. What effect does the status of war have upon contracts and other legal liabilities existing between citizens of the belligerent nations?

23. State in a general way the rules which a nation must follow in order to maintain a position of neutrality in time of war.

24. Define *blockade* and tell how it is usually conducted.

After completing the work, add and sign the following statement:
I hereby certify that the above work is entirely my own.
(Signed)